

**STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES**

CONTRACT FOR SERVICES

BEARINGPOINT, INC.

1. Introduction

A. Parties

This Contract for services is entered into between the State of Texas, acting by and through the Department of Information Resources (hereinafter “DIR”) with its principal place of business at 300 West 15th Street, Suite 1300, Austin, Texas 78701, and BearingPoint, Inc. (hereinafter “Vendor”), with its principal place of business at 1676 International Drive, McLean, VA 22102.

B. Compliance with Procurement Laws

This Contract is the result of compliance with applicable procurement laws of the State of Texas. DIR issued a solicitation on the Comptroller of Public Accounts’ Electronic State Business Daily, Request for Offer (RFO) DIR-SDD-TMP-100, on March 1, 2007, for Information Technology Security Services. Upon execution of this Contract, a notice of award for RFO DIR-SDD-TMP-100 shall be posted by DIR on the Electronic State Business Daily.

C. Order of Precedence

This Contract; Appendix A, Standard Terms and Conditions For Services Contracts; Appendix B, Vendor’s Historically Underutilized Businesses Subcontracting Plan; Appendix C, Customer Service Agreement; Appendix D, Pricing and Services Index; Exhibit 1, Vendor’s Response to RFO DIR-SDD-TMP-100, including all addenda; and Exhibit 2, RFO DIR-SDD-TMP-100, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor. In the event of a conflict between the documents listed in this paragraph, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then Appendix D, then Exhibit 1, and finally Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

2. Term of Contract

The term of this Contract shall be two (2) years commencing on the last date of approval by DIR and Vendor. Prior to expiration of the original term, DIR and Vendor may extend this Contract, upon mutual agreement, for up to two (2) optional one-year terms.

3. Service Offerings

Services available under this Contract are limited to Information Technology Security Services as specified in Appendix D, Pricing and Services Index. Vendor may incorporate changes to their services offering; however, any changes must be within the scope of services awarded based on the posting described in Section 1.B above.

4. Pricing

A. Manufacturer's Suggested Retail Price (MSRP)

MSRP is defined as the sales price suggested by the manufacturer or publisher of the service.

B. Customer Discount

The minimum Customer discount for all services will be the percentage off MSRP as specified in Appendix D, Pricing and Services Index. Customer Discount includes the DIR administrative Fee specified in Section 5.

C. Customer Price

1) The price to the Customer shall be calculated as follows:

$$\text{Customer Price} = \text{MSRP} - \text{Customer Discount}$$

2) Customers purchasing services under this Contract may negotiate more advantageous pricing or participate in special promotional offers. In such event, a copy of such better offerings shall be furnished to DIR upon request.

3) If pricing for services available under this Contract are provided at a higher discount to: (i) an eligible Customer who is not purchasing those services under this Contract or (ii) any other entity or consortia authorized by Texas law to sell said services to eligible Customers, then the available discounts in this Contract shall be adjusted to that higher discount. This Contract shall be amended within ten (10) business days to reflect the higher discounts.

D. DIR Administrative Fee

The administrative fee specified in Section 5 below shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

E. Tax-Exempt

As per Section 151.309, Texas Tax Code, Customers under this Contract are exempt from the assessment of State sales, use and excise taxes. Further, Customers under this Contract are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j).

F. Travel Expense Reimbursement

Pricing for services provided under this Contract are exclusive of any travel expenses that may be incurred in the performance of those services. Travel expense reimbursement may include personal vehicle mileage or commercial coach transportation, hotel accommodations, parking and meals; provided, however, the amount of reimbursement by Customers shall not exceed the amounts authorized by the current State Travel Regulations. Travel time may not be included as part of the amounts payable by Customer for any services rendered under this Contract. The DIR administrative fee specified in Section 5 below is not applicable to travel expense reimbursement. Anticipated travel expenses must be pre-approved in writing by Customer.

G. Changes to Prices

Vendor may change the price of any service at any time, based upon changes to the MSRP, but discount levels shall remain consistent with the discount levels specified in this Contract. Price decreases shall take effect automatically during the term of this Contract and shall be passed onto the Customer immediately.

5. DIR Administrative Fee

A) The administrative fee to be paid by the Vendor to DIR based on the dollar value of all sales to Customers pursuant to this Contract is two percent (2%). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$2,000.00.

B) All prices quoted to Customers shall include the administrative fee. DIR reserves the right to change this fee upwards or downwards during the term of this Contract, upon written notice to Vendor. Any change in the administrative fee shall be incorporated in the price to the Customer.

6. Notification

All notices under this Contract shall be sent to a party at the respective address indicated below.

If sent to the State:

Sherri Parks, Director
Contracting & Procurement Services
Department of Information Resources
300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 475-4700
Facsimile: (512) 475-4759
Email: sherri.parks@dir.state.tx.us

If sent to the Vendor:

Tava Michalik
BearingPoint, Inc.
301 Congress Ave., Suite 1500
Austin, TX 78701
Phone: (512) 542-5345
Facsimile: (512) 542-8063
Email: tava.michalik@bearingpoint.com

7. Customer Service Agreement

Services provided under this Contract shall be in accordance with the Customer Service Agreement as set forth in Appendix C of this Contract. No changes to the Customer

Service Agreement terms and conditions may be made unless previously agreed to by Vendor and DIR.

8. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Services Contracts.

A. Section 3. General Provisions, B. Modification of Contract Terms and/or Amendments is hereby replaced in its entirety as follows:

- 1) The terms and conditions of the Contract shall govern all transactions by Customers under the Contract. The Contract may only be modified or amended upon mutual written agreement of DIR and Vendor.
- 2) Customers shall not have the authority to modify the terms of the Contract; however, additional Customer terms and conditions that do not conflict with the Contract and are acceptable to Vendor may be added in a Purchase Order and given effect. No additional term or condition added in a Purchase Order issued by a Customer can weaken a term or condition of the Contract. Pre-printed terms and conditions on any Purchase Order issued by Customer hereunder will have no force and effect. In the event of a conflict between a Customer's Purchase Order and the Contract, the Contract term shall control.
- 3) All Purchase Order terms and conditions (including, without limitation, any associated performance schedules) are subject to the mutual agreement of the Vendor and the Customer. Each Purchase Order must be affirmatively accepted by the Vendor before it becomes a binding obligation of the Vendor. The Vendor may reject a Purchase Order for any reason; the Vendor shall communicate any rejection of any Purchase order to the Customer promptly.

B. Section 3. General Provisions, E. Survival is hereby replaced in its entirety as follows:

All applicable service agreements that were entered into between Vendor and a Customer under the terms and conditions of the Contract shall survive the expiration or termination of the Contract. All Purchase Orders issued and accepted by Vendor shall survive expiration or termination of the Contract. Such Purchase Order shall remain in effect and continue to be governed by the terms and conditions of this Contract until the earliest of such time as the services to be delivered thereunder are completed, the Purchase Order expires by its terms or the Purchase order is terminated in accordance with this Contract; no provision of the Purchase Order shall survive termination or expiration.

C. Section 4. Contract Fulfillment and Promotion, A. Service, Sales and Support of the Contract is hereby replaced in its entirety as follows:

Vendor shall provide service, sales and support resources to serve all Customers throughout the State. It is the responsibility of the Vendor to sell, market, and

promote services available under the Contract. Vendor shall use reasonable efforts to make potential Customers aware of the existence of the Contract. All sales to Customers for services available under the Contract shall be processed through the Contract unless a non-state agency Customer elects to procure such services under a separate contract.

D. Section 4. Contract Fulfillment and Promotion, B. Internet Access to Contract and Pricing Information, 2) Accurate and Timely Contract Information is hereby replaced in its entirety as follows:

Vendor agrees that the website information specified in the above paragraph will be accurately and completely posted, maintained and displayed in a materially accurate, complete, objective and timely manner. Vendor, at its own expense, shall correct any non-conforming or inaccurate information posted at Vendor's website within ten (10) business days after written notification by DIR.

E. Section 5. Purchase Orders, Invoices and Payments, A. Purchase Orders is hereby replaced in its entirety as follows:

All Customer Purchase Orders will be placed directly with the Vendor. Accurate Purchase Orders shall be effective and binding upon Vendor when accepted by Vendor. Each Purchase Order must be affirmatively accepted by the Vendor before it becomes a binding obligation of the Vendor. The Vendor may reject a Purchase Order for any reason; the Vendor shall communicate any rejection of any Purchase Order to the Customer promptly.

F. Section 6. Contract Administration, B. Reporting and Administrative Fees, 5) Accurate and Timely Submission of Reports is hereby replaced in its entirety as follows:

- a) The reports and administrative fees shall be accurate and timely and submitted in accordance with the due dates specified in this section. Vendor shall correct any inaccurate reports or administrative fee payments within five (5) business days upon written notification by DIR. Vendor shall deliver any late reports or late administrative fee payments within five (5) business days upon written notification by DIR. If Vendor is unable to correct inaccurate reports or administrative fee payments or deliver late reports and fee payments within five (5) business days, Vendor must contact DIR and provide a corrective plan of action, including the timeline for completion of correction. The corrective plan of action shall be subject to DIR approval.
- b) Should Vendor fail to correct inaccurate reports or cure the delay in timely delivery of reports and payments within the corrective plan of action timeline, DIR reserves the right to require an independent third party audit of the Vendor's records as specified in C.3 of this Section, at DIR's expense.

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G. Section 6. Contract Administration, C. Records and Audits, 5) is hereby added as follows:

5) Except as may be required to comply with the State Auditor's Office rights under Section 2262.003, Texas Government Code, audit rights are limited as follows: (a) no records, documents or other information that is subject to privilege under applicable law or rules of evidence shall be subject to disclosure pursuant to any audit or similar review related to this Contract; (b) the scope of any audit and Vendor's provision of copies, office space and availability of its personnel related thereto must be reasonable in light of the volume and scope of work performed under this Contract; and, (c) any contractors retained by the governmental entity conducting an audit related to this Contract and their respective personnel shall execute a non-disclosure agreement reasonably required by the Vendor in connection with the audit. For the avoidance of doubt, nothing in this Agreement constitutes a waiver of any privilege against disclosing documents or information afforded to the Vendor under applicable law or rules.

H. Section 7. Vendor Responsibilities, A. Indemnification, 2) Acts or Omissions is hereby replaced in its entirety as follows:

Vendor shall indemnify and hold harmless the State of Texas and Customers, THEIR OFFICERS, EMPLOYEES, AND AGENTS FROM AND AGAINST ALL THIRD PARTY CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDING, COSTS, DAMAGES AND LIABILITIES, INCLUDING REASONABLE ATTORNEY FEES for bodily injury (including death) or damage to real or tangible property to the extent caused by any negligent or tortuous acts or omissions of the Vendor or its agents, employees, subcontractors, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract provided the Customer: (i) notifies Vendor promptly in writing of such claim, (ii) reasonably cooperates in response to Vendor's requests for assistance. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE OFFICE OF THE ATTORNEY GENERAL. VENDOR SHALL PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS FEES.

I. Section 7. Vendor Responsibilities, A. Indemnification, 3) Infringement is hereby replaced in its entirety as follows:

a) Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights by any deliverables provided to a Customer under a Purchase Order provided the Customer:

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(i) notifies Vendor promptly in writing of such claim, (ii) reasonably cooperates in response to Vendor's requests for assistance and (iii) complies with Vendor's direction to cease using any deliverables which, in Vendor's judgment, is likely to be ruled an infringement of a third party's intellectual property rights. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE OFFICE OF THE ATTORNEY GENERAL. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. b) Vendor shall have no liability if the alleged infringement is caused in whole or part by: (i) use of the deliverables in combination with items or services not provided under the Contract, (ii) use of the deliverable for a purpose or in a manner for which the deliverable was not designed, (iii) any intellectual property right owned by or licensed to Customer, (vi) any use of a deliverable by Customer that is not in conformity with the terms of any applicable license agreement or (v) modification of any deliverable by a party other than Vendor.

c) If Vendor becomes aware of an actual or potential claim, or Customer provides Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against Customer, shall), at Vendor's sole option and expense: (i) procure for the Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing. In the event that neither of the foregoing options can be achieved on commercially reasonable terms, the Vendor may require Customer to return the affected services (or affected work product resulting therefrom) in exchange for the refund of all fees paid by the Customer in connection therewith.

J. Section 7. Vendor Responsibilities, B. Taxes/Worker's Compensation/ Unemployment Insurance, 2) is hereby replaced in its entirety as follows:

2) VENDOR AGREES TO INDEMNIFY AND HOLD HARMLESS CUSTOMERS, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR EXPECTATIONS OF BENEFITS BY VENDOR, ITS EMPLOYEES, REPRESENTATIVES, AGENTS OR SUBCONTRACTORS IN ITS PERFORMANCE UNDER THIS CONTRACT provided the Customer: (i) notifies Vendor promptly in writing of such claim, (ii) reasonably cooperates in response to Vendor's requests for assistance. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED

DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE OFFICE OF THE ATTORNEY GENERAL. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES.

K. Section 7. Vendor Responsibilities, I. Security of Premises, Equipment, Data and Personnel is hereby replaced in its entirety as follows:

Vendor may, from time to time during the performance of the Contract, have access to the personnel, premises, equipment, and other property, including data, files and /or materials (collectively referred to as "Data") belonging to the Customer. Vendor shall use commercially reasonable efforts to preserve the safety, security, and the integrity of the personnel, premises, equipment, Data and other property of the Customer, in accordance with the applicable requirements set forth in the applicable Purchase Order. Vendor shall be responsible for damage to Customer's equipment, workplace, and its contents when such damage is caused by its employees or subcontractors.

L. Section 7. Vendor Responsibilities, J. Background and/or Criminal History Investigation is hereby replaced in its entirety as follows:

Prior to commencement of any services, background and/or criminal history investigation of the Vendor's employees and subcontractors who will be providing services to the Customer under the Contract may be performed by certain Customers having legislative authority to require such investigations. Any such background screening requirements must be set forth in the applicable Purchase Order(s). Should any employee or subcontractor of the Vendor who will be providing services to the Customer under the Contract not be acceptable to the Customer as a result of the background and/or criminal history check, then Customer may immediately terminate its Purchase Order and related Customer Service Agreement or request replacement of the employee or subcontractor in question. In the event that the Customer elects to terminate the Purchase order and Customer Service Agreement under the preceding sentence, such termination shall not be considered to be a termination for default or breach.

M. Section 7. Vendor Responsibilities, K. Limitation of Liability is hereby replaced in its entirety as follows:

For any claim or cause of action arising under or related to the Contract: i) none of the parties shall be liable to the other for punitive, special, or consequential damages, even if it is advised of the possibility of such damages; and ii) Vendor's liability for damages of any kind to the Customer shall be limited to the total amount paid to Vendor under the Purchase Order under which the liability arose.

N. Section 8. Contract Enforcement, B. Termination, 3) Termination for Convenience is hereby replaced in its entirety as follows:

DIR or Vendor may terminate the Contract, in whole or in part, by giving the other party thirty (30) calendar days written notice. A Customer may terminate a Purchase Order if it is determined by the Customer that Vendor will not be able to deliver services in a timely manner to meet the business needs of the Customer.

DIR or Vendor may terminate the Contract for convenience, in whole or in part, by giving the other party thirty (30) calendar days written notice. A Customer may terminate a Purchase Order for convenience by giving Vendor thirty (30) calendar days written notice.

O. Section 8. Contract Enforcement, B. Termination, 4) Termination for Cause, b) Purchase Order is hereby replaced in its entirety as follows:

Subject to the notice and cure provisions set forth below, Customer or Vendor may terminate a Purchase Order upon the occurrence of a material breach of any term or condition: (i) of the Contract, or (ii) included in the Purchase Order in accordance with Section 3.B.2 above. The non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Purchase Order.

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This Contract is executed to be effective as of the date of last signature.

BearingPoint, Inc.

**The State of Texas, acting by and through the
Department of Information Resources**

Authorized By: Signature on File

Authorized By: Signature on File

Name: Gary Miglicco

Name: Cindy Reed

Title: Vice President

Title: Deputy Executive Director
Operations & Statewide Technology Sourcing

Date: 07/14/08

Date: 07/18/08

Legal: Signature on File 07/17/08